

December 20, 2013

William H. Hyatt, Jr.
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william.hyatt@klgates.com**Via E-mail**Sarah P. Flanagan, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway
New York, NY 10007

Dear Sarah:

On behalf of the Cooperating Parties Group (CPG), we are writing in response to the September 23, 2013 letter from Carol Dinkins, on behalf of Occidental Chemical Corporation (OCC) and its indemnitors, Tierra Solutions, Inc. (Tierra), and Maxus Energy Corporation (Maxus) (collectively, TMO). In that letter, Ms. Dinkins attempts to defend, justify or deflect attention from the simple facts raised in our August 6, 2013 letter to you, that OCC and its indemnitors are: (1) in violation of their ongoing obligations to participate in funding the RI/FS in progress under the 2007 Administrative Order On Consent for the Lower Passaic River Study Area (2007 AOC); (2) in violation of EPA's 2012 Unilateral Administrative Order (UAO) to participate in the RM 10.9 Removal Action; and (3) refusing to pay for sampling work performed by the CPG's contractors on TMO's behalf for TMO's Newark Bay RI/FS. Ms. Dinkins' letter fails to defend or justify TMO's position on any of these issues, and we again request that EPA, at a minimum:

- Enforce the 2007 AOC and require TMO to fund their obligations under the AOC;
- Confirm TMO's establishment of an independent financial assurance for their CSO work consistent with EPA's directive by letter dated September 5, 2013;
- Enforce the 2012 UAO and require TMO to complete the Lister Avenue Phase II removal action; and
- Direct TMO to pay what it owes the CPG for Newark Bay chemical water column monitoring costs.

1. OCC continues to avoid paying any share of LPRSA RI/FS costs.

Despite all of their protests, TMO does not refute the basic fact that it is in violation of the 2007 RI/FS AOC for the Lower Passaic River Study Area (LPRSA) by failing to fund the RI/FS Trust since 2012. The cost of the RI/FS continues to climb and OCC continues to shirk its responsibilities with respect to the LPRSA. OCC is a signatory to the 2007 AOC but decided unilaterally this year to stop complying with the 2007 AOC despite repeated requests from the

Anthony P. La Rocco, Administrative Partner, New Jersey

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CPG and EPA to comply. OCC's obligations as a signatory to the 2007 AOC are clear. See Lower Passaic River Study Area Administration Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, CERCLA Docket No. 02-2007-2009 at Sections IX and XXVI. OCC's refusal to fund the AOC this year resulted in a shortfall of over \$3 million. EPA requested by letter dated June 27, 2013 that OCC fund its obligation under the 2007 AOC. (Exhibit 1a.) But OCC refused, without consequence. The CPG notified EPA of OCC's failure in its August 6, 2013 letter, and the CPG was forced to cover OCC's payment default. (Exhibit 1b.) OCC's disregard of its funding obligations and EPA's request has had no adverse consequence for OCC and its indemnitors, allowing them to ignore EPA and their obligations under the 2007 AOC.

We can see no reason why EPA should not enforce the 2007 AOC to require OCC's participation in funding the RI/FS Trust. EPA's apparent concession to allow OCC to avoid paying its share of the RI/FS Trust stands in contrast to EPA's treatment of OCC when EPA's own costs are at stake. In May 2013, EPA sent a demand letter to OCC as a signatory to the 2007 AOC for reimbursement of EPA's oversight costs for the RI/FS work conducted by the CPG. (Exhibit 1c.) The CPG merely asks that EPA demand the same of OCC for funding the RI/FS Trust.

2. OCC remains noncompliant with the Unilateral Administrative Order for RM 10.9.

There is nothing inaccurate about the statement in our August 6, 2013 letter to you that OCC continues to defy the RM 10.9 Removal UAO. The UAO requires OCC to "make best efforts to participate in the performance" of the removal work with the CPG. See Unilateral Administrative Order No. 02-2012-2020 for RM 10.9 Removal, ¶ 13. Ms. Dinkins claims that OCC is in compliance with the UAO because it submitted what it calls a "good faith offer" to the CPG. As EPA is well aware, the CPG rejected that offer in 2012. The dredge portion of the removal is now complete and the capping stage is under way and set to be completed by January 2014. Yet OCC has done nothing to participate in the performance of this work.

As the CPG has documented at length in previous correspondence to EPA in 2012, OCC's offer was woefully deficient, and cannot be viewed as a good faith attempt to comply with the UAO. Attached as Exhibits 2a – 2d are communications regarding OCC's purported "good faith offer." Our letter of August 10, 2012 (Exhibit 2d) outlined the uncertainty in cost and liability associated with this "offer" and the reasons for rejecting it. EPA was involved in meetings with Tierra, Maxus and OCC concerning the offer, and did not criticize the CPG's rejection of the offer. To date, over a full year after OCC's offer was rejected, OCC has undertaken no further "efforts to participate in the performance" of the removal work.

Moreover, the OCC "offer" on the UAO to provide dewatering equipment that was used at the Lister Removal in 2008 is long moot. The sediment removal portion of the project at RM 10.9 has now been completed. Even though dioxin from OCC's former Lister Avenue Site is driving the removal action, EPA is allowing OCC to avoid any responsibility for any work at RM 10.9. The end result is that OCC successfully stalled EPA's enforcement with an

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unworkable and costly "offer," long ago rejected, and now successfully has avoided any consequence for its non-participation and non-compliance with the UAO.

We recently learned that in October, 2013 EPA asked OCC to "discuss implementation" of two tasks related to the ongoing RM 10.9 work: (1) addressing removal and capping of sediments around a pair of 72-inch water mains that run through the removal area, and (2) an engineering analysis of movable bridges in the area. (Exhibit 2e.) We are not aware of whether OCC has responded substantively to this request, but at a minimum we do not believe that performance of these tasks (should OCC even agree to do so) is remotely sufficient to address their significant outstanding responsibility at RM 10.9.

Time has proven that OCC is plainly content to sit on the sidelines behind their indemnitors, Tierra and Maxus, for as long as EPA allows them to do so, while the CPG continues to address the Lister Avenue dioxin-contaminated sediment at RM 10.9 and elsewhere at its own significant expense.

3. The CPG, unlike OCC, is in full compliance with the 2007 AOC, and has provided TMO all information necessary for it to perform its Newark Bay RI/FS.

Ms. Dinkins tries to deflect attention away from OCC's disregard of its obligations by alleging that the CPG itself is somehow not in compliance with the 2007 RI/FS AOC. She asserts that OCC is somehow excused from its obligations as a signatory to the 2007 AOC to fund the RI/FS Trust because, she alleges, the CPG is not coordinating with OCC for the RI/FS in Newark Bay. However, OCC has not articulated any request for specific additional information it needs from the CPG in order to continue its own work on the Newark Bay RI/FS, and Ms. Dinkins does not describe any particular need for any information in her September 23 letter. Moreover, alleged coordination is not a pre-requisite to the payment obligation.

TMO's unreasonable demands for "coordination" are not new. (See Exhibit 3, which provides minutes from a September, 2012 meeting between TMO, the CPG and EPA to discuss coordination issues.) Contrary to TMO's assertions, the CPG has provided TMO access to all information gathered while TMO was in the CPG. As to information gathered after TMO left the CPG, EPA has established a protocol whereby parties have the opportunity to review and comment on documents posted to the EPA SharePoint site. TMO is well aware of this. The CPG has taken advantage of this opportunity, while TMO has not. The CPG will continue to cooperate and post documents to SharePoint and consider all comments TMO provides. Further, all information that the CPG has collected and provided to EPA is, and has been, publically available.

TMO is no longer a member of the CPG and cannot expect to have the same access to the RI/FS process as it did when it was a member and funding the work, and they certainly cannot expect levels of access on par with those of current CPG members. If the CPG were to provide such an unreasonable level of access to TMO, the CPG would incur substantial

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administrative costs, for which TMO does not provide funds to support, and the CPG may not be able to complete the RI/FS within the schedule mandated by EPA.

4. OCC's belated effort to complete the now unusable CSO/SWO Study is inadequate to justify any remaining support from the CPG Trust Fund.

The CPG has repeatedly requested that EPA excuse it from continuing to post financial assurance for OCC's Combined Sewer Overflow/Storm Water Outfall (CSO/SWO) Study because the Study has been so delayed that the data is not useable in the RI/FS. Ms. Dinkins' letter attempts to exonerate OCC from its failure to meet deadlines for the Study, required by the 2011 CSO/SWO Study AOC signed only by OCC, claiming that the EPA has approved all schedule changes, and that weather has been a factor beyond OCC's control. However, this assertion ignores the fact that OCC delayed the required sampling activities for years, wholly unrelated to weather conditions, leaving the EPA and CPG no choice but to use alternative inputs for their modeling. All of these scheduling changes that caused the several years of delay have been unilaterally made by OCC (or its indemnitors) and were caused by their actions/omissions, with no fault by the CPG.

We have previously outlined OCC's recalcitrance and delays in performing the Study. As we have stated in prior correspondence, including our July 5, 2013 letter to you (Exhibit 4a), the scheduling changes have rendered that Study useless for CPG's purposes of completing the RI/FS because the data will not be available until after the RI/FS is completed.

Whether EPA expressly or implicitly approved of the many delays and schedule changes does not change the fact that the CPG should bear no obligation whatsoever to support this Study. Accordingly, the CPG requested that EPA discontinue the requirement for the Trust to be used in any way to support the CSO Study (see Exhibit 4a). Although weather conditions this spring and summer might have briefly delayed CSO sampling events for short time periods, the numerous lengthy delays and extensions in the Study over the last two years have been due to circumstances that were certainly well within OCC's control.

The CPG acknowledges EPA's directive by letter dated September 5, 2013 (Exhibit 4b) for OCC to provide alternative funding for the performance guarantee. We request that EPA confirm that alternative funding for the performance guarantee has been established consistent with EPA's directive such that the Trust will not be used as financial assurance for the CSO Study.

5. Failure to enforce the 2008 AOC requiring removal of dioxin-laden sediments adjacent to the Lister Avenue Site allows a significant source of contamination to remain in place and allows OCC to further benefit from its inaction.

On June 23, 2008, EPA Region 2, OCC and Tierra entered into an AOC for the conduct of a source control removal action to remove 200,000 cubic yards of contaminated sediment immediately adjacent to the Lister Avenue Site. ("2008 AOC") As EPA stated in its Action Memorandum supporting the AOC, "The objective of this action is to remove a significant

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portion of the most concentrated inventory of dioxin contaminated sediments, thereby removing source material that poses a potential risk to human health and the environment.”¹

Although Phase I of the Removal Action, addressing only 20% of the sediments designated for removal is complete, nothing is being done about the remaining 80%. Under the AOC, OCC and Tierra were required to complete an EE/CA Workplan and Schedule for the Phase II Removal, within 30 days of the approval of the Phase I Removal Design Workplan. (See Section 19(b) and Appendix C of the 2008 AOC.) The Phase I RDWP was approved April 9, 2009, nearly five (5) years ago. But, to date, OCC and Tierra still have not submitted the EE/CA Workplan and Schedule for the Phase II Removal. We see no reason why EPA should not, at a minimum, demand stipulated penalties under the AOC for failure to comply with the express terms of the order.

6. OCC's refusal to reimburse the CPG for work done to support OCC's own Newark Bay chemical water column monitoring (CWCM) work is only a blatant attempt to leverage its position in the unrelated disputes with the CPG.

Our August 6 letter described OCC's current refusal to pay for the costs of the CPG contractor, AECOM, in collecting CWCM data for OCC to use in the Newark Bay RI/FS. Ms. Dinkins responds by asserting that this situation is “solely of [the CPG's] own making” because the CPG has (1) failed to coordinate with TMO on the LPRSA RI/FS and (2) has refused to pay for “its share” of the CSO Study. As explained above, these assertions have no basis in fact. Moreover, an alleged failure to coordinate on a different site or to pay a share for a study for a different site does not justify OCC's decision to stop paying for CWCM work required to support the Newark Bay RI/FS, which is an obligation solely of OCC. OCC's actions amount to an unjustified, self-granted “set-off.”

The CPG does not have *any* “share” of the CSO Study under the 2011 CWO/SWO AOC, which was entered only by OCC. The CPG's only obligation under the AOC for the CSO Study was to provide the LPRSA RI/FS Trust as financial assurance. OCC has done essentially nothing for two years on the CSO Study. To the extent the CPG ever agreed separately with OCC to fund any part of the CSO study, any such obligation is null and void because the original purpose of the Study—to provide data for the completion of the LPRSA RI/FS—has been irrevocably frustrated. The CPG informed OCC of its position by letter on July 5, 2013 that the CSO Study is in no way connected to the CWCM for the OCC's Newark Bay RI/FS AOC.

Furthermore, OCC's complaints about the CPG's cooperation in sharing information concerning the RI/FS are empty, as described above, and do not implicate the AECOM work. The information from AECOM's work has been provided to OCC and its indemnitors, and

¹ Request for Authorization to Conduct a CERCLA Non-Time Critical Removal Action at the Diamond Alkali Site, January 8, 2009, at 2.

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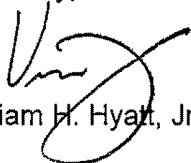
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Ms. Dinkins does not allege otherwise. Any dispute over the sharing of information has nothing to do with OCC's obligations to pay for work that AECOM is performing on OCC's behalf, in support of the Newark Bay AOC for which OCC is solely responsible. OCC has reaped the benefit of that work and now chooses not to pay for it. OCC and its indemnitors continue to cloud the water on an otherwise clear, straightforward obligation to pay for work that is for OCC's benefit. The CPG reserves all rights against OCC for its unjust enrichment from AECOM's work.

In short, OCC has not complied with the UAO for RM 10.9, it is no longer in compliance with the 2007 LPRSA RI/FS AOC, and it has ceased paying for the CWCM work related to the Newark Bay RI/FS. Good faith and fair dealing require deeds, not words, yet there has been nothing from OCC (and its indemnitors) but words. We again ask that EPA enforce OCC's obligations under the 2007 LPRSA AOC and the 2012 UAO for RM 10.9 with no further delay.

Thank you for your attention to this matter.

Sincerely,



William H. Hyatt, Jr.

Enclosures

cc: Carol E. Dinkins, Esquire
CPG Members

EXHIBIT 1A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1868

June 27, 2013

By Electronic Mail

Carol Dinkins, Esq.
Vinson & Elkins
First City Tower
1001 Fannin St., Suite 2500
Houston, TX 77002

Re: Diamond Alkali, Lower Passaic River Study Area - Administrative Settlement
Agreement and Order on Consent for Remedial Investigation and Feasibility Study,
USEPA Region 2 CERCLA Docket No. 02-2007-2009

Dear Carol:

The U.S. Environmental Protection Agency ("EPA") understands that Occidental Chemical Corporation has declined to participate in the payment due in May 2013 into the trust account established by the Cooperating Parties Group ("CPG") under the Administrative Settlement Agreement and Order on Consent ("AOC") for the remedial investigation and feasibility study ("RI/FS") for the Lower Passaic River Study Area ("LPRSA").

EPA is not familiar with the provisions of the private agreement among the members of the CPG, which until last year included Occidental, and cannot evaluate what obligations the signatories may have under that agreement. However, by virtue of having executed the AOC as a Settling Party, Occidental committed under Paragraph 97 to "establish and maintain a Performance Guarantee" and Occidental should undertake to meet its commitment in that regard.

We understand that you have contacted the CPG recently to discuss coordination, though without success. As this could be beneficial to performance of the RI/FS, we would like to encourage continued efforts in this regard, and we will similarly encourage the CPG. Perhaps a discussion of payment into the trust account by Occidental could be a step in that direction.

Please do not hesitate to contact me at 212-637-3136 if you have any questions.

Sincerely yours,

Sarah P. Flanagan
Assistant Regional Counsel

June 27, 2013
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cc: William H. Hyatt, Jr., Esq.
R. Basso, ERRD
S. Vaughn, ERRD
P. Hick, ORC

EXHIBIT 1B

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August 6, 2013

Via Electronic and Regular Mail

Sarah Flanagan, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway
New York, NY 10007

Re: RI/FS Trust Fund Payment

Dear Sarah:

As you are aware, the Fifth Amendment to Trust Agreement dated February 7, 2013 provides that a ninth payment of \$10,200,000 shall be deposited into the RI/FS Trust by May 7, 2013. The Cooperating Parties Group ("CPG") paid its share of the payment, \$7,156,731, on or prior to the May 7, 2013 due date. The remaining balance, \$3,043,269, represents the balance due by Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), and Occidental Chemical Corporation ("Occidental") (collectively, "T/M/O").

In order to permit the CPG time to try and collect payment from T/M/O and issue assessments to CPG members to the extent T/M/O did not pay, the CPG requested, and EPA agreed, to extend the time for payment of T/M/O's share until August 5, 2013. EPA also sent Occidental a letter dated June 27, 2013 encouraging Occidental to meet its commitment to establish and maintain a Performance Guarantee under the RI/FS AOC.

To date, T/M/O has failed to make its share of the RI/FS Trust Fund payment. Accordingly, while the CPG reserves all rights with respect to T/M/O, invoices were issued to CPG members and we are writing to confirm that \$3,043,269 was initiated via wire transfer to the RI/FS Trust on August 5, 2013. EPA will be receiving a separate confirmation letter from de maximis, inc. detailing the wire information.

The CPG has continued to step up to the plate to complete not only the RI/FS, but also the RM 10.9 Removal Action. In contrast, T/M/O has continued to defy and/or significantly delay its various obligations, including:

Anthony P. La Rocco, Administrative Partner, New York City kgates.com

- Occidental is a signatory to the RI/FS AOC, and has an absolute and unconditional obligation to contribute funding towards completion of the RI/FS. As set forth above, it has failed to meet its funding obligations.
- Occidental has received a Unilateral Administrative Order for the RM 10.9 Removal Action, which it continues to defy. In the meantime, the CPG is working diligently to carry out the Removal Action.
- As set forth in my letter to you dated July 5, 2013, Occidental has not met any of the milestones to date in the schedule for the Combined Sewer Overflow/Stormwater Outfall (CSO/SWO) Investigation, and there is no indication that Occidental will complete the investigation within the timeframe the CPG needs in order to incorporate data from the investigation in the RI/FS. As such, EPA has directed the CPG not to delay completion of the RI/FS because of delays in the CSO Study, and the CPG suggested that EPA should terminate the investigation under its authority provided in Paragraph 57c. of the CSO/SWO AOC, or alternatively, terminate the RI/FS Trust Fund as the performance guarantee for the investigation. Your letter dated August 1, 2013 advises that EPA does not plan to terminate the investigation, but is considering the CPG's request to terminate the RI/FS Trust Fund as the performance guarantee for the investigation.
- As we recently reported to EPA, T/M/O has ceased processing AECOM's invoices for Chemical Water Column Monitoring work in Newark Bay. Notwithstanding the fact that Occidental alone is the respondent to the Newark Bay AOC, the CPG, while reserving all rights against T/M/O, will be submitting AECOM's invoices to EPA for processing through the RI/FS Trust.
- Other tasks under the Newark Bay AOC continued to be delayed by T/M/O. For example, the submission of the revised Newark Bay CSM continues to be delayed and T/M/O has not submitted updated QAPPs by modifying the existing LPRSA QAPP as directed by Region 2. Therefore, T/M/O has not received approval to collect sediment, fish, and crab for chemical analysis and toxicity testing this summer and fall and will miss the 2013 field season. These continued delays and inactivity result in a prolonging of the Newark Bay Study Area RI/FS.
- The Removal Action AOC entered into by Occidental and Tierra in 2008 provided for a two-phase removal of 200,000 cubic yards of dioxin contaminated sediment adjacent to the Diamond Alkali site. While T/M/O has completed the Phase I removal of 40,000 cubic yards of sediment, the CPG understands that T/M/O has not taken any action to proceed with the Phase II removal of 160,000 cubic yards.

Sarah P. Flanagan
August 6, 2013
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Therefore, the economic burden being shouldered by the CPG is significant, unwarranted, and, quite simply, unfair. The CPG hopes that EPA will assist in the CPG's continued efforts to encourage T/M/O to honor its obligations.

Thank you for your attention to this matter.

Very truly yours,



William H. Hyatt Jr.

cc: Carol Dinkins, Esq.

EXHIBIT 1C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
280 BROADWAY
NEW YORK, NEW YORK 10007-1848

May 17, 2013

By Electronic Mail

Carol Dinkins, Esq.
Vinson & Elkins
First City Tower
1001 Fannin St., Suite 2500
Houston, TX 77002

Re: Diamond Alkali, Lower Passaic River Study Area - Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, USEPA Region 2 CERCLA Docket No. 02-2007-2009

Dear Carol:

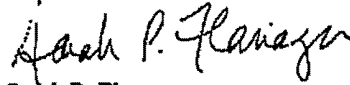
On May 16, 2013, EPA sent the enclosed Bill for Collection #27213260033 for Future Response Costs to Bill Hyatt, coordinating counsel for the Cooperating Parties Group ("CPG"). Payment is due within thirty (30) days of receipt, consistent with the requirements of the above-referenced Administrative Settlement Agreement and Order on Consent ("AOC") for the remedial investigation and feasibility study ("RI/FS") for the Lower Passaic River Study Area ("LPRSA").

EPA understands that Occidental Chemical Corporation ("Occidental") is, functionally speaking, no longer a member of the CPG. However, as a signatory to the AOC, Occidental remains obligated to pay Future Response Costs, along with the other signatories. Moreover, Occidental was a member of the CPG during the period of time covered by the bill.

Based on our telephone call on April 11, 2013, I understand that you have already conveyed to Bill Hyatt that your clients are prepared to meet their payment obligations for Bill for Collection #27213260033, which covers the period from July 1, 2011 through August 31, 2012. Please coordinate with Bill Hyatt to work out the logistics of Occidental's payment of the appropriate amount. The end result should be payment in full of EPA's Bill for Collection. Please let me know if you and Mr. Hyatt have any questions about how best to accomplish that.

Please do not hesitate to contact me at 212-637-3136 if you have any questions.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Sarah P. Flanagan".

Sarah P. Flanagan
Assistant Regional Counsel

cc: William H. Hyatt, Jr., Esq.
R. Basso, ERRD
S. Vaughn, ERRD
P. Hick, ORC

EXHIBIT 2A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1868

July 24, 2012

By Electronic Mail

William H. Hyatt, Jr., Esq.
K&L Gates LLP
One Newark Center, Tenth Floor
Newark, NJ 07102-5285

Re: Diamond Alkali, Lower Passaic River Study Area – River Mile 10.9
Administrative Settlement Agreement and Order on Consent for Removal Action
USEPA Region 2 CERCLA Docket No. 02-2012-2015

Dear Mr. Hyatt:

On July 23, 2012, Occidental Chemical Corporation ("Occidental") submitted to the U.S. Environmental Protection Agency ("EPA") a notice of intent to comply with Unilateral Administrative Order ("UAO") 02-2012-2020, issued under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9606(a).

Accordingly, EPA anticipates that Occidental will make a good faith offer to the Settling Parties that are signatories to Administrative Settlement Agreement and Order on Consent for Removal Action ("AOC") 02-2012-2015. Under the UAO, Occidental must provide EPA with a copy of its good faith offer. We have also indicated to Occidental that EPA should be kept informed of its subsequent discussions with the Settling Parties. Further, to facilitate the process of reaching agreement on the participation of Occidental in the removal action EPA plans to meet with the Settling Parties and Occidental.

To arrive at our common goal of the efficient performance of the removal action at RM 10.9 with the participation and cooperation of Occidental, EPA will look for a similar cooperative effort from the Settling Parties.

Typically, when EPA enters into an AOC and concurrently issues a UAO requiring the UAO recipient to participate and cooperate with the parties performing pursuant to the AOC, EPA includes in the AOC language reflecting that the AOC parties have a reciprocal obligation to cooperate with the UAO recipient. Under the particular circumstances surrounding the negotiation of the AOC for the RM 10.9 removal action, EPA did not include this language in the AOC. Nevertheless, for Occidental to be able to comply with the UAO, the Settling Parties

will have to make their own best efforts to coordinate with Occidental to conduct the work required under the AOC. We would like the Settling Parties to confirm that they will, at a minimum:

- Undertake good-faith consideration of any good-faith offer to perform or pay for work required by the AOC submitted by Occidental;
- Reply in writing to any offer by Occidental as soon as reasonably possible, but no later than within 30 days of receipt of the offer; and
- Engage in good-faith negotiations with Occidental.

We look forward to receiving confirmation from the Settling Parties that they are willing to undertake these efforts; and to working with both Occidental and the Settling Parties on the RM 10.9 removal action.

Sincerely yours,



Sarah P. Flanagan
Assistant Regional Counsel

cc: R. Basso, ERRD
S. Vaughn, ERRD
P. Hick, ORC

EXHIBIT 2B

Vinson & Elkins

Carol E. Dinkins ccdinkins@velaw.com
Tel +1.713.758.2628 Fax +1.713.615.5311

July 27, 2012

By Email & US Mail

William H. Hyatt, Jr., Esq.
Coordinating Counsel, Lower Passaic River
Cooperating Parties Group
K&L Gates
One Newark Center, Tenth Floor
1085 Raymond Blvd.
Newark, NJ 07102

Dear Mr. Hyatt:

This letter is in follow up to mine of July 23, 2012, in which through you we advised the Settling Parties who are respondents to Administrative Order on Consent, CERCLA Docket No. 02-2012-2015, that Occidental Chemical Corporation (Occidental) had notified USEPA Region 2 of its intent to comply with Unilateral Administrative Order CERCLA Docket No. 02-2012-2020. The latter-referenced order requires that Occidental on or before July 30 submit a good faith offer to the River Mile (RM) 10.9 Settling Parties to implement the Statement of Work (SOW), in whole or in part. This letter conveys Occidental's good faith offer to implement, in part, the SOW by taking certain steps to make available to the Settling Parties the existing upland processing facility (UPF) utilized in the Non-Time Critical Removal Action at RM 3.2. As you will see, Occidental's good faith offer, if accepted, would provide the Settling Parties material advantages, including significant savings of both time and money and the benefit of a "road map" of the recent successful experience in a Lower Passaic River sediment removal action more than twice as large as that contemplated at RM 10.9.

Section II of the SOW sets forth the Work to be performed. The components of Occidental's good faith offer could play a role in various aspects of implementation of the SOW. We identify a number of these below in a list that we believe is representative, not exhaustive. Additionally, it is likely the Basis of Design Report and the Pre-Final and Final Design Reports well may contain proposed activities in which the components of this good faith offer could play a role.

Vinson & Elkins LLP Attorneys at Law
Abu Dhabi Austin Beijing Dallas Dubai Hong Kong Houston London Moscow
New York Palo Alto Riyadh San Francisco Shanghai Tokyo Washington

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Paragraph II.B.1 sets forth the items to be included in the Removal and Capping Work Plan/Basis of Design Report (BODR), which items include the following:

- Methods of sediment removal including resuspension/turbidity control, transport, offloading, stockpiling, and treatment; treated sediment disposal; process water treatment and discharge; capping; cap materials transport, and cap placement (emphasis added)
- Proposed siting/locations of staging and processing
- Real estate and easement requirements
- Substantive requirements of ARARs
- Implementation contracting strategy

Paragraph II.B.2 sets forth items to be included in the Pre-Final Design, which items include the following:

- Sediment Treatment Plan
- Process Water Treatment and Discharge Plan
- Sediment Transport and Disposal Plan
- Permits and other legal requirements, unless work will occur entirely on-site, in which case the submittal shall address substantive requirements of ARARS/TBCs documentation

Paragraph II.B.3 specifies removal and capping implementation activities, including "The Settling Parties shall acquire and/or lease property . . . and transport sediment to . . . disposal location(s)."

Occidental offers to implement in part the SOW as follows:

If the Settling Parties cannot have all removed sediment handled by treatment technology vendors, it will be necessary for the remaining portion of the sediment to be dewatered prior to disposal, or the vendors may need the sediment dewatered before treatment. Having just successfully completed a Non-Time Critical Removal Action, Phase I, at RM 3.2, Tierra Solutions Inc. (Tierra)*, which conducted that work on behalf of Occidental, has in place an upland processing facility (UPF) adjacent to the Lower Passaic River. Occidental and Tierra, on behalf of Occidental, offer the following as implementation, in part, of the SOW:

1. The ground lease (the "Lease") between Tierra and Morris Fairmont Associates ("Morris") for the Phase I Removal Action UPF will expire by its terms on October 31, 2012. Tierra, on behalf of Occidental, offers to negotiate with Morris to extend the term of the Lease for an additional twelve (12) months: November 1, 2012 through October 31, 2013 (the "Lease Extension"). Provided that Tierra and Morris are able to reach agreement on commercially-reasonable terms for said Lease Extension, Tierra, on Occidental's behalf, will formally amend the Lease to include the Lease Extension, which amendment would contain a clause permitting assignment of the lease to the Settling Parties.

2. Tierra, on Occidental's behalf, would offer to pay to Morris the Lease rent and maintain any financial assurance and insurance coverage required under the Lease for the first nine (9) months of the Lease Extension. Occidental expects that the Settling Parties would accept an assignment of the Lease and pay the remainder of the Lease rent and all related Lease costs for the final three (3) months of the Lease Extension.

3. Following completion of the Time Critical Removal Action, the Settling Parties would be responsible for decontamination of the equipment and for restoration of the leased premises. The equipment was decontaminated following completion of Phase I of the Non-Time Critical Removal Action and the leased property shortly will have been sampled to confirm that it was restored to its pre-leased condition. Tierra will provide a copy of that sampling report.

* In this letter transmitting Occidental's good faith offer, all references to Tierra Solutions, Inc. also shall constitute reference to Maxus Energy Corporation (Maxus).

4. The activities conducted under the removal action contract (the "Contract") between Tierra and ARCADIS for the Phase I Non-Time Critical Removal Action are anticipated to be completed by August 31, 2012. Tierra, on behalf of Occidental, offers to negotiate with ARCADIS to extend the Contract schedule to allow the four (4) UPF sediment presses, the three (3) sludge holding tanks and the process water tank to remain at the UPF until October 31, 2012 (the "Contract Extension"). Provided that Tierra and ARCADIS are able to reach agreement on commercially-reasonable terms for said Contract Extension, Tierra, on Occidental's behalf, will formally amend the Contract to include the Contract Extension. Tierra would arrange for the dewatering equipment to remain onsite until October 31, 2012, so that the Settling Parties have it available if the Pre-Final Design anticipates a need for use of dewatering equipment.

5. Tierra, on Occidental's behalf, would pay to ARCADIS the costs associated with the Contract Extension through October 31, 2012.

6. The permits (CERCLA permit equivalencies (PEs)) related to the UPF (property use and plant operations) include Land Use (Waterfront Development and Flood Hazard Area and Water Quality Certification), Air Pollution Control, and Surface Water Discharge. These PEs pertain specifically to the UPF's use during the Phase I Non-Time Critical Removal Action and are issued to Tierra Solutions, Inc. As such, each PE would need to be transferred/assigned to another entity in accordance with NJAC, through approval by NJDEP in consultation with USEPA, so as to relieve Tierra of any further obligations under the PEs. Further, each PE will require some form of amendment to address project-specific requirements, e.g., compliance sampling and operational/expiration dates.

7. Tierra, on Occidental's behalf, would transfer ownership to the Settling Parties of the sheet piling that it used in the Phase I Non-Time Critical Removal Action, which the Settling Parties thereafter can utilize in the RM 10.9 Time Critical Removal Action and/or sell for scrap metal or other recycling or reuse after completion of the Time Critical Removal Action. Occidental expects that the Settling Parties will pay all costs associated with steel handling, transportation and any storage.

This good faith offer is tendered as a settlement and cannot be used against Occidental, Maxus or Tierra in any litigation regarding cost recovery and/or cost allocation for any Passaic River remedial or other action, including without limitation, the RM 10.9 Removal Action.

Tierra's costs to date for having located the UPF site; having designed, acquired, constructed and permitted the UPF; and having acquired the steel sheet piling have constituted approximately \$12 million in expenditures, so the Settling Parties will experience a considerable cost savings by having the UPF available for their use.

Additionally, the siting, design, permitting and construction of the UPF consumed eighteen months of considerable effort, and we estimate that for the Settling Parties to replicate the existing UPF would consume six to eighteen months of effort and commensurate expense. Having available the UPF will save the Settling Parties the time and effort of locating a site in this highly-urbanized and crowded area and designing a de-watering facility, of negotiating with other property owners, and of encountering potential difficulties in achieving permit equivalencies for such a facility. This existing UPF availability will reduce the likelihood of project delays that could occur while the Settling Parties seek property, then develop the necessary customized designs for the new property, its layout, the location, and other activities, and assist the Settling Parties in completing more rapidly the implementation of this Time Critical Removal Action than would be possible absent the availability of this existing UPF. Occidental believes, based on Tierra's experience with the Phase I Non-Time Critical Removal Action, that absent the use of the Tierra UPF, it is unlikely the Settling Parties will be able to complete the removal action on the schedule contemplated by EPA. Thus, the benefits of Occidental's offer to the Settling Parties go well beyond the purely monetary considerations set forth above.

In addition to the funds already expended by Tierra, the extension of the lease and maintenance onsite of the de-watering equipment as offered above will cause Tierra to incur over \$2 million in expenditures, more than \$200,000 of which is already committed.

The Settling Parties are hereby advised that time is of the essence. Given that Tierra must deal with third parties in making the UPF available, that those third parties have business opportunities other than making available the UPF to the Settling Parties, and that Tierra, on behalf of Occidental, has already incurred and continues to incur significant costs in keeping such third parties in a "holding pattern," we ask that the Settling Parties advise us of their intent to accept this good faith offer as soon as practicable but in no event later than August 14, 2012, which under the meeting schedule customarily followed by the Cooperating Parties Group would be its next regularly-scheduled meeting date. In order to advance negotiations between the parties, Tierra intends to send to the Settling Parties draft agreements by Friday, August 3rd, with the objective of achieving execution of the

V&E

July 27, 2012 Page 6

agreement(s) among the Settling Parties, Tierra, on behalf of Occidental, and Occidental to memorialize these arrangements on or before August 27, 2012.

If you would like to schedule a meeting for us to describe this offer and the related agreement(s) and answer any questions you might have about it, we are available to meet in person in Newark on Tuesday, July 31, 2012 and again on Tuesday, August 7, 2012.

I look forward to hearing from you.

Very truly yours,



Carol E. Dinkins

cc: Sarah Flanagan, Assistant Regional Counsel
Stephanie Vaughn, Remedial Project Manager / Project Coordinator

US 1506841v.1

EXHIBIT 2C

Vinson&Elkins

Carol E. Dinkins cdinkins@velaw.com
Tel +1.713.758.2528 Fax +1.713.815.6311

August 6, 2012

By Email

William H. Hyatt, Jr., Esq.
Coordinating Counsel, Lower Passaic River
Cooperating Parties Group
K&L Gates
One Newark Center, Tenth Floor
1085 Raymond Blvd.
Newark, NJ 07102

Dear Bill:

Thank you for your letter of even date. Please find enclosed a proposed agreement to memorialize the actions set forth in Occidental's good faith offer. Please note that this draft agreement is a work in progress that is still undergoing review by my clients. We are providing it for discussion purposes, and reserve the right to make changes in the future. Given the need for Tierra, on behalf of Occidental, to move forward in the very near future to implement Occidental's good faith offer, we were disappointed that you and the Settling Parties are unable to meet tomorrow for us to answer any questions the Settling Parties may have regarding the offer, and to work toward achieving an executed agreement by August 27.

Nonetheless, we hope that you share our desire to begin a meaningful dialogue to resolve this matter quickly, and we remain willing to meet with you, at a location and time of your convenience, before August 14, which we assume is the date for the CPG's next regularly-scheduled meeting.

Our request for prompt review of this proposed agreement is necessitated by the tight timing of completing the requisite arrangements with third parties. Pursuant to the terms of the Ground Lease (the "Lease") between Tierra and Morris, Tierra is obligated to decontaminate and remove all of the UPF equipment from the Lease property. Tierra also must restore the Lease property to certain pre-lease conditions and vacate the property. All of these activities must be completed by the end of the Lease term, which was originally to have been July 31. Tierra was working diligently to complete these activities and had expected to do so by the July 31 Lease termination date. In order to accommodate Occidental's good faith offer, Tierra extended the Lease term to October 31 and suspended all UPF demobilization and restoration work. This three-month extension of the Lease and work suspension has caused Tierra, on behalf of Occidental, considerable expense.

Vinson & Elkins LLP Attorneys at Law
Abu Dhabi Austin Beijing Dallas Dubai Hong Kong Houston London Moscow
New York Palo Alto Riyadh San Francisco Shanghai Tokyo Washington

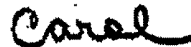
First City Tower, 1001 Fannin Street, Suite 2500
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As Occidental explained in its good faith offer, the availability of the Tierra UPF has many advantages for the Settling Parties. Time is, however, of the essence. In order to make the Lease property and UPF available for the Settling Parties' use in performing the RM 10.9 Removal Action, Tierra, on behalf of Occidental, has begun discussions with Morris to extend the Lease term for 12 additional months (November 1, 2012 through October 31, 2013). Tierra has also begun discussion with the appropriate UPF contractors and vendors to maintain the primary UPF equipment at the Lease property until late 2012. Tierra has proceeded in good faith in these matters, yet has done so in the face of considerable risk and expense.

If the Settling Parties do not accept Occidental's good faith offer in the near term, Tierra will be left with little choice but to halt any further efforts to extend the Lease and UPF and will instead resume UPF demobilization and Lease restoration activities. We estimate that it will be necessary to resume the demobilization and restoration activities by August 31 in order to meet the October 31 Lease termination date. Accordingly, we would very much appreciate the Settling Parties' acceptance of Occidental's good faith offer and willingness to conclude an agreement regarding same by August 31.

In light of the foregoing, we appreciate the Settling Parties prompt consideration. I hope to meet with you in the very near future.

Very truly yours,



Carol E. Dinkins

Cc: Stephanie Vaughn, EPA
Sarah Flanagan, EPA

US 1519232v.1

EXHIBIT 2D

August 10, 2012

Via Electronic and Overnight Mail

Carol E. Dinkins, Esquire
Vinson & Elkins
First City Tower
1001 Fannin Street, Suite 2500
Houston, TX 77002-6760

Dear Carol:

This will acknowledge receipt of your August 6, 2012 letter to me, as Coordinating Counsel for the Lower Passaic River Study Area Cooperating Parties Group (CPG), received after normal business hours, and accompanied by a "Discussion Draft" of a "Participation and Cooperation Agreement" dated August 2, 2012 ("Draft Agreement"), proposing a basis for participation by Occidental Chemical Corporation ("OCC") and Tierra Solutions, Inc. ("Tierra") in the RM 10.9 Removal Action. Although your letter characterizes the Draft Agreement as memorializing a "good faith offer" by your clients to participate in the RM 10.9 Removal Action, you also state that "this draft agreement is a work in progress that is still undergoing review by [your] clients" and that you "reserve the right to make changes in the future." Thus, this is not a "good faith offer," or, indeed, any offer at all.

You propose that some final version of the Draft Agreement be entered into by OCC, Tierra and the 70 member companies of the CPG who have agreed, at their sole cost and expense, to perform the RM 10.9 Removal Action which is the subject of the Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA Docket No. 02-2012-2015, effective June 18, 2012 ("AOC").

The "offer" described in the Draft Agreement, even if it were presented as a true offer, falls far short of a "good faith offer" to participate in the RM 10.9 Removal Action. As an initial matter, the CPG has determined that fully licensed, commercial facilities are available to dewater sediment removed from RM 10.9, to the extent that dewatering sediment is even necessary. If sediment washing pilot programs are utilized, some or all of the need for dewatering may be obviated. Furthermore, the cost of using a commercial facility is less than assuming the myriad of costs in OCC and Tierra's "offer." Therefore, the proposal from OCC and Tierra for the CPG to assume their lease and equipment rentals, accept transfer of their permits, and restore the leased property is not necessary for the RM 10.9 Removal Action and not consistent with the CPG's planned removal activities. Thus, the "offer" provides no value to the CPG.

Since OCC and Tierra are overwhelmingly responsible for the contamination driving risk in the sediments at RM 10.9, as established by objective facts presented to EPA, OCC and Tierra must offer a financial contribution or other value commensurate with its share of liability. However, rather than contributing to the costs to be incurred by the CPG in conducting the RM 10.9 Removal Action, as the Unilateral Administrative Order issued by EPA to OCC ("UAO")

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requires, the "offer" is likely to *increase* those costs, as well as impose other responsibilities and potential liabilities on the CPG, with no meaningful participation or appropriate cost sharing by OCC and Tierra, an obviously unacceptable result. Thus, it represents a step backward from Tierra's prior proposal to pay a per capita share of the costs of the RM 10.9 Removal Action, a proposal the CPG has already rejected as grossly inadequate and unfair.

The following are examples of the many reasons why the CPG has concluded that the "offer" is unacceptable. This list, which the CPG reserves the right to supplement, exemplifies the large amount of uncertainty in cost and liability associated with this "offer." Therefore, for these and other reasons, the CPG cannot seriously consider, and hereby rejects, the "offer" made by OCC and Tierra.

- As you know, OCC and Tierra were afforded the opportunity to become parties to the AOC by paying their fair share of the costs of performing the RM 10.9 Removal Action. That fair share was determined by a neutral, assisted by scientific experts, in a mediation in which OCC and Tierra actively participated. OCC and Tierra declined that opportunity and, as a result, EPA issued the UAO to OCC. The value of the "offer" OCC and Tierra have made constitutes, at best, a small fraction of the RM 10.9 Removal Action costs and far less than a level that any neutral observer would consider as a good faith offer. So that EPA can put your "offer" in perspective, the CPG asks that you consent immediately to the disclosure to EPA of the mediator's report such that the bona fides of your "offer" may be evaluated by the agency.
- Significantly, OCC and Tierra have not offered to perform any dewatering, treatment or disposal of sediments removed by the CPG under the AOC, even though those sediments are contaminated with hazardous substances that are driving risk, predominantly attributable to OCC and Tierra.
- Instead, OCC and Tierra are attempting to transfer costs and risks to the CPG that are currently their obligations (for example, the costs of Upland Processing Facility ("UPF") restoration and the risk that restoration by OCC and Tierra may later be deemed to be inadequate). Moreover, the OCC and Tierra "offer" would force the CPG to lease a location and rent equipment long before the UPF is even needed. Such obligations and risks will be avoided under the CPG plan to use a commercial facility to conduct dewatering or stabilization of excavated sediments. The unnecessary assumption of these obligations and risks would increase the CPG's overall costs of the RM 10.9 Removal Action. Thus, the CPG rejects the acknowledgement in Paragraph 2 of the Draft Agreement that the "offer" constitutes a "good faith offer."
- Furthermore, OCC and Tierra have not provided any assurance that the UPF will be in a condition ready to operate on November 1, 2012. For example, it is the CPG's understanding that the equipment for process water treatment has been removed from the UPF. No mention is made of that fact in the "offer," but the process water treatment equipment would have to be returned to the UPF and reinstalled before the UPF could be used by the CPG for any purpose.

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- The process used by OCC and Tierra to transfer excavated sediment from the Phase I area of their removal to the UPF is not suitable for use by the CPG and would actually preclude the sediment washing pilot tests the CPG may undertake. OCC and Tierra have failed to address the fact that there is no dock/offloading facility at the UPF suitable for transfer of sediment by the CPG to the UPF. To utilize the UPF, the CPG would have to construct an offloading facility to receive RM 10.9 sediments at the UPF, at considerable cost. To make matters worse, dredging of Tierra Phase 2 sediments would likely be required prior to construction of such an off-loading facility.
- In your August 6 letter to me you stated the need to conclude an agreement with the CPG to use the UPF by August 31. By agreeing to use the UPF at this early date, the CPG would effectively be forced to abandon the use of sediment washing pilots in treating any of the RM 10.9 sediments. The intent to use such pilots is memorialized in the AOC Statement of Work. The Draft Agreement renders the CPG's plans for sediment washing moot in two ways. First, if the CPG were to utilize the same method of conveying sediments from the RM 10.9 barges to the UPF as was used in the Tierra Phase 1 removal, then this method may make the sediment unsuitable for evaluating the effectiveness of the sediment washing pilots. Second, the desired date of August 31 is several weeks before the AOC requires the CPG to make a final determination on whether to conduct the sediment washing pilots.
- Under the terms of the Draft Agreement, the CPG would lease the property on which the OCC and Tierra UPF is located, creating the potential for additional liabilities on the part of the CPG members. For example, the CPG members could become liable as "covered persons" under CERCLA for the UPF or for obligations with respect to the UPF under the Industrial Site Recovery Act ("ISRA"). In stark contrast to the Draft Agreement, the Basis of Design Report ("BODR") submitted by the CPG to EPA contemplates that any dewatering, treatment and disposal of sediments from the RM 10.9 Removal Action would be accomplished at a fully licensed and compliant commercial facility. The CPG has determined that such facilities will be available for this work. The CPG does not intend to lease any property, or to assume any land ownership or operation liability in performing any dewatering, stabilization, treatment and disposal required for the RM 10.9 Removal Action. OCC and Tierra have not even attempted to demonstrate that use of the UPF would save the CPG costs compared to the use of a commercial facility.
- Under the Draft Agreement, OCC and Tierra would be obligated only to negotiate with the current owner of the land where the UPF is located and the contractor which owns or controls the equipment located on the UPF, and to enter into agreements with those persons, according to your letter to me of July 27, 2012, only on "commercially-reasonable terms." The terms of any such extended leases are unknown at this time. Indeed, it is unknown whether the persons with whom OCC and Tierra propose to negotiate will be willing to reach any agreement at all. Moreover, it is unknown, even by OCC and Tierra whether they will ever be able to reach agreements on "commercially reasonable terms," which may be very different from the perspectives of OCC/Tierra and the CPG. These uncertainties provide little value and result in more expense, thus

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tipping the scale in favor of the CPG making alternative arrangements for any dewatering, treatment and disposal of contaminated sediments excavated by the CPG under the AOC.

- Under Paragraph 3(g) of the Draft Agreement, Tierra, on behalf of OCC, would be obligated only to take "reasonable measures to facilitate the transfer" of permits or permit equivalents that OCC and Tierra claim are currently in place for the UPF. The CPG would thus assume the risk that those "reasonable measures" would not succeed. Indeed, under the terms of the Draft Agreement, "[a]ccomplishing the transfer of these permits ...shall be the responsibility of the [CPG]." Under the BODR, the CPG would utilize fully permitted commercial facilities and would therefore, bear no risk that permits or permit equivalents would not be transferred or in place in a timely fashion.
- Because of the location of the UPF near a densely populated area, and the high concentrations of contaminants in the sediments that were the subject of Phase I of the Tierra removal, the CPG understands that there are significant air monitoring requirements associated with the operation of the UPF. Under the BODR, the CPG would utilize a commercial facility and the commercial facility would bear the responsibility of compliance with any such requirements – not the CPG.
- Paragraph 30(b) of the AOC requires that before shipping any hazardous substances, pollutants or contaminants from the Site to an "off-Site location," the CPG obtain a certification from EPA that the "proposed receiving facility is operating in compliance with the requirements of [CERCLA and the NCP]. [The CPG] shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence." The CPG has no way of knowing whether the UPF will meet these requirements when OCC and Tierra propose to turn them over to the CPG. By contrast, under the BODR, compliance with these requirements would be the responsibility of the commercial facility retained by the CPG.
- According to Paragraph 3 of your July 27, 2012 letter to me, the CPG "would be responsible for decontamination of the equipment and for restoration of the lease premises" at the conclusion of the RM 10.9 Removal Action. Your letter asserts that "[t]he equipment was decontaminated following completion of [Tierra's removal action] and the leased property shortly will have been sampled to confirm that it was restored to its pre-leased condition." You say that "Tierra will provide a copy of that sampling report" (which presumably has not yet even been completed). Details of the "pre-leased condition" of the property and the obligations of OCC and Tierra to the site owner, are unknown to the CPG. Thus, the CPG is being asked to become the guarantor that the cleanup by Tierra will be adequate (and acceptable to the property owner), when that cleanup has not even been completed. Moreover, the CPG would become responsible for the removal and proper disposal of all of Tierra's improvements to the UPF site, including foundations, asphalt and piles of soil Tierra scraped from the surface of the property when the UPF was constructed. The CPG estimates that fulfilling these

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requirements could cost the CPG many hundreds of thousands of dollars. The CPG would have none of these responsibilities or costs by using a commercial treatment and disposal facility.

- In Paragraph 3(h) of the Draft Agreement, OCC and Tierra offer to transfer ownership of certain sheet piling, for which they no longer have any use, although the CPG would be required to "pay all costs associated with handling, transportation and any storage" of the sheet piling. The CPG is not required to use sheet piling under the BODR; therefore this "offer" is of no value to the CPG.
- Paragraph 4 of the Draft Agreement would impose a number of unreasonable obligations on the CPG. Paragraph 7 of the Agreement would require the CPG to forego suit on claims related to RM 10.9. These undertakings are of no value to the CPG and cannot be considered in evaluating any "good faith offer" on the part of OCC and Tierra.
- You have urged that the CPG respond to the OCC/Tierra proposal immediately, but the reality is that the proposal is subject to a number of conditions, such as successful negotiations with third parties, which may never come to pass. The CPG cannot be sure that OCC and Tierra will be able to satisfy those conditions in a timely manner and must therefore make its own alternative arrangements to fulfill the requirements of the AOC.

In short, OCC and Tierra have offered to provide equipment and sheet piling for which they no longer have any use, on leased land which may or may not be available, using equipment which may or may not be available, at a cost far greater than the plan presented by the CPG in the BODR. Use of the UPF is an unacceptable alternative to the CPG as use of available commercial facilities is far preferable for dewatering/stabilization, processing and disposing of sediment from the RM 10.9 Removal Action.

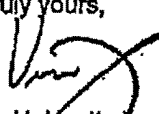
The CPG is disappointed that OCC and Tierra have chosen to present such an inadequate "offer." Separate and apart from its technical and logistical deficiencies, the "offer" made by OCC and Tierra falls far short of what any neutral party could consider to be in "good faith" in light of Tierra, Maxus and OCC's overwhelming share of responsibility for the RM 10.9 remediation. In order to expedite the process and provide a meaningful offer, OCC and Tierra must offer to provide a contribution toward the cost of the RM 10.9 Removal Action commensurate with their fair share. Thereafter, the CPG will be willing to consider any proffer of services or material as may be deemed by the CPG to be beneficial to the efficient and timely completion of the RM 10.9 Removal Action, based upon technical review and mutual agreement on the value of such services or material.

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Carol E. Dinkins, Esquire
August 10, 2012
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The CPG looks forward to your prompt response.

Very truly yours,



William H. Hyatt, Jr.
Coordinating Counsel
LPRSA Site Cooperating
Parties Group

cc: Sarah Flanagan, Esquire
Ms. Stephanie Vaughn

EXHIBIT 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1855

February 11, 2013

By Electronic Mail

Carol Dinkins, Esq.
Vinson & Elkins
First City Tower
1001 Fannin St., Suite 2500
Houston, TX 77002

William H. Hyatt, Jr., Esq.
K&L Gates LLP
One Newark Center, Tenth Floor
Newark, NJ 07102-5285

Re: Diamond Alkali, Lower Passaic River Study Area - Administrative Settlement
Agreement and Order on Consent for Remedial Investigation and Feasibility Study,
USEPA Region 2 CERCLA Docket No. 02-2007-2009
Newark Bay Study Area - Administrative Order on Consent for Remedial Investigation
and Feasibility Study, USEPA Region 2 CERCLA Docket No. 02-2004-2010

Dear Counsellors:

On September 18, 2012, EPA met with representatives of the Cooperating Parties Group ("CPG"), performing the remedial investigation and feasibility study ("RI/FS") for the Lower Passaic River Study Area ("LPRSA"), and Occidental Chemical Corporation ("Occidental") and Tierra Solutions, Inc. ("Tierra"), performing the RI/FS for the Newark Bay Study Area ("NBSA"). EPA's goal was to improve communications among the parties, cooperation and communication being essential if the CPG and Tierra (acting on behalf of Occidental) are to carry out the work required under the LPRSA Agreement and the NBSA Agreement, respectively.

Following the September 18, 2012 meeting EPA circulated draft meeting minutes for comment; the final minutes are enclosed herein. On the last page, the minutes identify action items, and issues that remained to be resolved. We take this opportunity to review progress made on the action items and identify additional steps to be taken:

February 11, 2013

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Action Items:

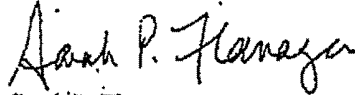
1. CPG and Tierra should submit lists of documents that will be generated for NBSA and LPRSA and send to EPA.
Status: To ensure we have complete information, EPA will ask both the CPG and Tierra to provide updated lists of planned deliverables by or before February 28, 2013.
2. Until an agreement is worked out, EPA will share draft documents with the other party and will decide on whether to incorporate their comments.
Status: EPA has been accepting comments from both CPG and Tierra on documents submitted by the other party, and incorporating such comments as we deem appropriate. We will continue this approach.
3. EPA will decide whether to grant access to the EPA SharePoint site to allow both parties to see each other's documents and data.
Status: EPA has given access to the EPA SharePoint site so that the CPG can review documents submitted by Tierra, and Tierra can review documents submitted by the CPG. To the extent that either Tierra and/or the CPG has not been posting documents to SharePoint when submitting them to EPA, they should do so.
4. Tierra and CPG need to come to an agreement how to proceed moving forward and meet objectives of the AOCs.
Status: EPA is encouraged that Tierra and the CPG have worked cooperatively on certain tasks, but we are aware that Tierra and the CPG have not reached full agreement and we urge you to continue those efforts. In the absence of such agreement, EPA has directed that Tierra should be invited to attend modeling meetings with EPA and the CPG, and that Tierra should be able to observe sampling in the NBSA conducted by the CPG. EPA has also asked that Tierra provide an updated schedule for the CSO/SWO study.

EPA wishes to remind the CPG and Tierra (and Occidental) that under the LPRSA agreement, the CPG is required to closely coordinate with Tierra and to ensure that one model is developed for the LPRSA and NBSA, and under the NBSA agreement, Occidental and Tierra are to coordinate with the CPG in submitting data obtained in the NBSA so that the CPG can develop the model for the LPRSA and NBSA. EPA is aware that Tierra would like to comment on technical documents prepared by the CPG prior to submittal to EPA, and similarly, the CPG would like to comment on documents prepared by Tierra prior to submittal to EPA. That level of coordination must be resolved by the parties themselves. However, to promote the coordination required under the LPRSA and NBSA agreements, EPA asks that Tierra and the CPG advise EPA if there are any other action items that should be added to the list above, with a focus on technical needs and information sharing.

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We look forward to hearing from you.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Sarah P. Flanagan". The signature is fluid and cursive, with the first name "Sarah" being more prominent.

Sarah P. Flanagan
Assistant Regional Counsel

Enclosure

cc: R. Basso, ERRD
E. Naranjo, ERRD
S. Vaughn, ERRD
A. Yeh, ERRD
P. Hick, ORC
A. Wagner, ORC

**Technical Coordination Meeting Minutes
September 18, 2012**

Attendees:

Rob Law, de maximis	Ray Basso, EPA
Bill Potter, de maximis	Eugenia Naranjo, EPA
Mike Barbara, mab.consulting	Stephanie Vaughn, EPA
Clifford Firstenberg, Tierra	Sharon Budney, CDM Smith
Carlie Thompson, Tierra	

Objective: Identify specific areas where the Cooperating Parties Group (CPG) and Occidental Chemical Corporation/Tierra Solutions, Inc (Tierra) must coordinate/cooperate in order to meet the requirements of the orders governing the Lower Passaic River Study Area (LPRSA) and the Newark Bay Study Area (NBSA)

Ray Basso, of EPA, reviewed the goals of the meeting, which are to identify issues and what items both parties need to work together on to accomplish the requirements of each Administrative Order of Consent (AOC). He stated that no decisions will be made today, and that we will likely turn over our findings to the attorneys, followed by a mediator, to work on agreements.

Briefly reviewed the AOCs for the NBSA and the LPRSA

- NBSA signed in 2004, then amended. Tierra is responsible for data collection within NB to support model of LPR and NB.
- LPRSA signed in 2007, includes the completion of the model for both NBSA and LPRSA. Tierra is also a respondent on this AOC. CPG responsible for model of LPR and NB.

Tierra paid their portion of the LPRSA RI/FS costs to the CPG up through the first quarter of 2013. This portion was paid prior to Tierra leaving the group. Tierra is unsure whether they will continue to pay, but this will partially depend upon cooperation CPG. Tierra states that they want to cooperate.

A. Sampling/Data Collection and Review

- LPRSA – nearing the end of data collection
- NBSA – still has more to do

New Sample Collection Events for Newark Bay

High Volume Chemical Water Column Monitoring (HV CWCM; October 2012)

- CPG is taking the lead
- Tierra provided comments on the first draft of the HV CWCM QAPP after CPG submitted it to EPA
- CPGs contractor is working under two purchase orders and invoices are assigned to either NBSA or LPRSA

ISSUE: Tierra made request to observe sample collection in NBSA and, at this time, does not think they will want to collect split samples. The CPG indicated that there may be logistical issues with observers on the sampling boats.

SEDFLUME

- EPA is taking the lead
- CPG and Tierra received QAPP last week, comments due by October 1, 2012
- SEDFLUME will be discussed at the EPA-CPG model collaboration meeting on September 25, 2012
- CPG is planning to give comments on locations
- Tierra is also planning to provide comments

Multibeam Bathymetry Survey in NBSA

- Tierra is taking the lead and paying for this effort
 - Needed for the sediment transport model
 - Modelers requested the survey be performed in NBSA, near the time the LPRSA event is currently being completed
 - CPG needs data from this event for the model
- ISSUE: Will need to coordinate the effort, CPG modelers will need to provide input into Tierra's QAPP, CPG wants Tierra to use similar methods/procedures to those that were used for LPRSA

SV CWCM — 3 more events (1 routine flow plus 2 high flow events)

- Activity in process
- CPG taking lead, Tierra receives invoices for work in NBSA

ISSUE: Tierra requests to receive modifications to the plans (QAPPs) in advance of them being provided to EPA and to be able to comment on them

Risk Assessment Sampling for NBSA

- Tierra is taking the lead
- Fish tissue and benthic invertebrate sampling, bioaccumulation and toxicology testing
- CPG will need data for food chain modeling
- Prior to Tierra leaving the CPG, CPG did not comment on Tierra's NBSA sampling
- CPG thinks they should have input (at least modelers) because these data will be employed by the CPG modeling team
- Tierra's position — CPG not a respondent to work in NBSA, they can see the information once it is turned over to EPA, when it is public information
- Tierra is willing to share data with the CPG after reporting
- Tierra clarified that it makes sense for Tierra to coordinate with the CPG's modelers, but there is no basis for CPG, in general, to review and comment upon the NBSA QAPPs.

ISSUE: While there is a need to share the data between CPG and Tierra, can/should CPG, or at least its modelers, provide input to how the data is being collected?

NBSA Sample Collection Summary

- Risk assessment not part of Phase 2
- EPA summarized general theme — will provide to each other the data that is needed for requirement of AOCs
- CPG thinks Tierra is not getting input from primary data users (specifically modelers) for NBSA data collection
- Tierra is willing to interact with CPG's modelers but there is no basis for the group members to provide comments

New Sample Collection Events for Passaic River Sampling

HV CWCM (see NBSA for details)

- Largest major sampling effort

ISSUE: Tierra reserves right to observe and collect split samples, logistic issues will need to be worked out. CPG acknowledged Tierra's desire to observe.

SV CWCM (see NBSA for details)

- Three events left

LRC SSP

- EPA will direct CPG to take additional samples
- CPG will prepare a QAPP Addendum to cover additional locations

ISSUE: Tierra wants to provide input on QAPP Addendum (locations of samples) in advance of Addendum submittal to EPA

Background/Reference Sampling above Dundee Dam

- Sediment and Tissue, bioaccumulation and toxicological testing
- Addendum to the existing QAPP
- Tierra saw initial document months ago
- Data does not fall directly into model
- It will help establish an upstream boundary, so is marginally related to the model

ISSUE: Tierra would like to have been able to review the QAPP Addendum prior to submittal to EPA

DO Monitoring -- only LPRSA

- Tierra was not aware of this sampling effort
- 12 locations in river, monitoring DO, from Summer 2012 through Thanksgiving

ISSUE: Tierra would have liked the opportunity to review/comment

LPRSA Sample Collection Summary

- Tierra wants to provide input on CPG QAPPs, QAPP Addendums and be made aware of Field Modifications, prior to submittal to EPA, with sufficient time to provide comments to modify documents.
- Tierra wants the opportunity to observe and possibly split for work in LPRSA that would include background samples

Data Reports -- Summary of Data

- Tierra wants to see the draft data reports when the CPG distributes to rest of CPG, they want an opportunity to review before they are submitted to EPA
- All parties OK once data reports are finalized - willing to turn over
- Tierra thinks because they paid to be a part of CPG, they should be participating (at least through the first quarter of 2013) in the upfront formation of the document (before submittal to EPA). This is not currently happening
- Tierra willing to work with the CPG modelers (data users), not attorneys representing each CPG member

ISSUE: Should Tierra (or CPG) have the ability to review documents at same time as EPA or review/comment before they are submitted to EPA

B. Meetings

- Modeling Meetings

- Both CPG and Tierra attend the EPA-CPG collaboration meetings
 - Tierra wants to be involved more in day to day modeling discussions, but it's unclear how this would work
 - Tierra is concerned they are on the outside of the day to day decisions
 - The AOCs require that the CPG complete the model for both the LPRSA and NBSA with EPA oversight; currently Tierra must just accept the results
 - CPG and EPA formerly had annual and semi-annual meetings (not current format) in which Tierra participated
 - Current EPA-CPG modeling collaboration meetings are held quarterly
 - More structured format for modeling meeting is being put in place, will take notes/minutes to distribute to all parties as well as developing list of action items/decisions that will be recorded. All presentations given at the meetings will be distributed with the minutes, which will be distributed in a timely basis.
 - FFS model vs. NBSA/LPRSA Model
 - CPG thinks that until agreement in place, it would rather not have Tierra participate in collaboration meetings
 - Tierra wants to be included in any CPG-only (non-EPA) modeling meetings where decision are made on the direction of model
 - Tierra thinks it needs to be a part of the decisions since they are the recipient of the biggest effect of the outcome of the model.
 - Tierra wants input in the agenda
 - Tierra wants more frequent updates (weekly) of the model, including code
- FUTURE ISSUE: Tierra to use the modeling results for remedy selection and future risk calculations. If additional model runs are needed, how will this work going forward, who will do this work?

- Other Meetings

- Tierra wants some kind of input as before, and to be included on the distribution list for meetings, especially risk assessment

C. Report Preparation

- Tierra is concerned there are a lot of comments on draft reports prior to EPA submittal on how the report is structured. They would not have the ability to comment on this aspect of the report if they comment on it at the same time as EPA.
- CPG – most of the data reports are done, will be working on the analysis reports including: modeling, risk assessment, RI, FS, treatability study, pilot study, etc.
- EPA's thought: it will take a lot of time/effort to get both groups to agree. Is this a worthwhile effort? Instead, perhaps the solution is to share all draft documents submitted to EPA with both groups when they are shared with the Partner Agencies. EPA will consolidate comments and decide which comments go back to authors.

ACTION: EPA wants list of all reports that will be submitted put together by both Tierra for NBSA and CPG for LPRSA to ensure we have a full accounting of all work products

D. Data Transfer

- **Model**
 - Tierra wants model code and input/output files on a frequent basis
 - October 2012 CPG will submit a technical memorandum with an update of their modeling efforts, including the model code, to EPA
 - September 25, 2012 is the next modeling collaboration meeting, Tierra will participate
 - **SharePoint**
 - CPG has a project portal – everyone in good standing with respect to the CPG's administrative agreement has access to this portal. As of June 2012, Tierra no longer has access because they left the group.
 - EPA has a SharePoint site – CPG has access to their documents, Tierra has access to their documents, each party cannot see the other's documents. EPA may grant access to each other's documents, they have been submitted to EPA.
- ISSUE: EPA must decide if this access is going to be granted.

E. Open Discussion

- **CSO/SWO**
 - CPG is paying for 49% of this effort, Tierra taking the lead
 - Weekly calls – Tierra stated that CPG stopped calling in
 - CPG representative – Swiat Kazcimar from O'Brien & Gere, was invited to the field demonstration and did attend. Tierra has not allowed CPG representative to participate in the discussion with Tierra's pesticide method issues
 - CSO/SWO AOC signed by Tierra; CPG signed the AOC for sole purpose of allowing Tierra to draw funds from the LPRSA Trust
 - CPG amended the trust agreement to allow for the RI/FS trust account to be used as financial assurance for the CSO/SWO work, and so that CSO/SWO invoices could be submitted to the trust account for payment.
 - Tierra states it has 100% of liability for completing the CSO Study
 - Tierra thinks they have been accommodating to CPG
 - CPG believes that the weekly calls that Tierra has agreed to are a waste of time
- ISSUES: 1. CPG wants opportunity to give input before documents go to EPA, CPG is not provided with comments or told why their comments were not incorporated at all. 2. Tierra does not want CPG to participate in the monthly technical meeting with EPA
- **RM 10.9 Removal Action**
 - Tierra is not signatory on the RM 10.9 AOC
 - Since EPA ordered them to participate, Tierra would want to be involved because it could impact them
 - Once Tierra finds way to participate, does their ability to comment change?
 - Tierra's expectation will be to participate on decisions that take place

- **Conclusions**

- Parties should consider level of effort it will take to come to an agreement on cooperating
- Consider what EPA can do to get them there, share/accept comments, EPA will entertain requests from both parties for meeting to discuss comments made on the other party's documents
- Tierra needs to determine if they will rejoin the group by paying their share of future LPRSA RI/FS costs, or how they will proceed forward
- EPA's message to Tierra -- make a decision on next Trust fund payment (Q1-2013) sooner rather than later, it will make a difference on how the coordination issues are resolved with the CPG
- We need to continue to work on an interim basis, while the two groups decide on how to come to a cooperation agreement. For meetings, attendance will be determined on a case by case basis to decide if parties can participate in EPA-related meetings.
- EPA warned that if Tierra and CPG don't work cooperatively/collaboratively they lose the benefit of scientific interaction
- EPA's oversight costs will increase if EPA is put in the position to incorporate the alternate parties' comments in document reviews and have additional meetings to discuss them
- If Tierra and CPG cannot come to an agreement, at some point EPA may request the data from both RI/FSs, evaluate it and write the reports.

Issues to Carry Forward and/or Resolve by Others

1. EPA wants a list of all documents that will be submitted for NBSA and LPRSA, to have a full accounting of all the work products.
2. Tierra needs to make a decision how to move forward with its future LPRSA RI/FS costs, whether they will continue to pay into the CPG.
3. In general, Tierra requests to observe sample collection in NBSA where the CPG takes the lead and may want to collect split samples.
4. Tierra requests to receive modifications to the SV CWCM plans (QAPPs) and be able to comment on them in advance of submittal to EPA.
5. Tierra wants to review and comment on CPG reports at the same time as CPG members review, and at least 30 days prior to reports being submitted to EPA.
6. Tierra wants to be involved with CPG meetings where decisions are made, especially on the model.
7. Tierra wants updates on the model inputs/output more frequently.
8. The CPG believes as primary users of Newark Bay data (i.e., modelers) that they should provide input to QAPP on how and what NBSA data are being collected.
9. CPG and Tierra will need to coordinate the NBSA multibeam bathymetry survey; CPG modelers will need to provide input into Tierra's QAPP, want to use similar methods/procedures that were used in LPRSA. EPA has established stringent requirements that CPG conduct its bathymetric surveys subsequent to its 2007 survey, using the same contractor, same boats and same equipment for each survey; these same requirements should be required for Tierra's NBSA survey(s) to ensure that the NBSA and LPRSA data sets are comparable.
10. CPG and Tierra want to provide comments on the EPA lead SEDFLUME sampling.
11. For Tierra to use the modeling data they will need to run the model (i.e. additional model runs), how will this work going forward, who will do this work?
12. CPG wants opportunity to give input on the CSO/SWO investigation before the documents go to EPA, CPG is not provided with comments or told why their comments were not incorporated at all.
13. EPA willing to share draft documents after submittal with the other party and incorporate their comments. EPA will entertain having meetings to discuss the comments. No guarantee the comments will be passed onto the other party. EPA oversight costs may increase.

Action Items:

1. CPG and Tierra should submit lists of documents that will be generated for NBSA and LPRSA and send to EPA.
2. Until an agreement is worked out, EPA will share draft documents with the other party and will decide on whether to incorporate their comments.
3. EPA will decide whether to grant access to the EPA SharePoint site to allow both parties to see each other's documents and data.
4. Tierra and CPG need to come to an agreement how to proceed forward and meet objectives of the AOCs.

EXHIBIT 4A



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July 5, 2013

Sarah Flanagan, Esquire
Assistant Regional Counsel
Office of Regional Counsel
New Jersey Superfund Branch
USEPA Region II
290 Broadway, 17th Floor
New York, NY 10007

RE: Combined Sewer Overflow/Stormwater Outfall Investigation for the Diamond
Alkali Superfund Site

Dear Sarah:

Based on the content of recent Monthly Progress Reports and the March 2013 QAPP submitted to EPA on behalf of Respondent Occidental Chemical Corporation (Occidental), it is clear that there are significant delays in the Combined Sewer Overflow/Stormwater Outfall (CSO/SWO) Investigation for the Diamond Alkali Superfund Site (Investigation), and there is no indication that Occidental will complete the Investigation within the timeframe the Cooperating Parties Group (CPG) needs in order to incorporate data from the Investigation in the Remedial Investigation/Feasibility Study (RI/FS).

Occidental's current projected schedule extends into 2015, after the CPG's completion of the RI/FS. Occidental has not met any of the milestones to date in the schedule for the Investigation, and has not completed taking the Phase I samples at the Ivy Street and Clay Street CSOs, which the revised schedule indicated would be done by May 10, 2013. The Data Use Objectives (DUOs) for the Investigation, in part, included providing support for the mass and contaminant loading calculations for the Sediment Transport Model, the Fate and Transport Model and the Conceptual Site Model supporting the RI/FS. However, the CPG does not have any data from the Investigation to use in LPRSA RI/FS, and has not been given any indication as to when validated data can be expected. As a result, the CPG had no choice but to use alternative inputs for the modeling, which has proceeded apace. EPA approved the use of these alternative inputs.

Currently, the CPG is in the final stages of the field work and in the middle of the evaluation of data for its RI/FS. The CPG anticipates that, except for revising the writing

NW-439807 v1

Anthony P. La Rocco, Administrative Partner, New Jersey

kigates.com

Sarah Flanagan, Esquire
July 5, 2013
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of the draft reports, its RI will be completed in the second quarter, 2014 and the FS will be completed in the fourth quarter, 2014. However, the data from the Investigation will not be available until more than a year after the draft RI/FS reports are completed. The March, 2013 QAPP schedule for the Investigation indicates that Occidental does not anticipate a final Data Quality and Usability Assessment Report Approval Letter from EPA until December 17, 2015. That projected schedule means that the CPG will not be assured that it can use the data from the Investigation until over a year after it has otherwise completed the draft RI/FS reports. This projected schedule would delay the RI/FS completion by at least 18 months.

There is no reason to delay the otherwise complete RI/FS study for this data and EPA has directed the CPG not to do so. To re-run the Sediment and Fate and Transport models each time a new round of data is available from the Investigation would be time consuming; expensive and disruptive. To re-run the Sediment and Fate and Transport models in 2015 or 2016, when all data from the Investigation might finally become available, would significantly and needlessly delay completion of the RI/FS. Both EPA and the CPG can use existing data sources in lieu of the data from the Investigation and complete the RI/FS in a timely manner.

In light of these facts, EPA has directed the CPG not to delay completion of the RI/FS because of delays in the CSO Study. EPA should also terminate the Investigation under its authority provided in Paragraph 57c. of the Administrative Settlement Agreement and Order on Consent with Occidental, or alternatively, terminate the RI/FS Trust Fund as the performance guarantee for the Investigation and require Occidental to provide alternative financial assurance. The CRG agreed to provide partial funding to Occidental for the Investigation because the CPG understood that the data from the investigation would be available for use in its RI/FS. Except for the benefit of using the data for the RI/FS, there was no benefit to the CPG for funding a share of the Investigation and the CPG was and is under no obligation to perform the Investigation. Occidental proposed the Investigation and negotiated for its performance. Occidental also caused the Order regarding the Investigation to rely on the CPG's RI/FS Trust as the financial security for its performance. It is particularly inequitable for Occidental to use the RI/FS Trust Fund as the financial security for its performance of the Investigation when Occidental has ceased making payments into the RI/FS Trust Fund.

Sarah Flanagan, Esquire
July 5, 2013
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The CPG stands ready to fulfill its obligations under the RI/FS Administrative Order on Consent and looks forward to completing the RI/FS in a timely and satisfactory manner. Thank you for your consideration of this matter.

Very truly yours,


William H. Hyatt, Jr.

cc: Carol E. Dinkins, Esq.

EXHIBIT 4B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

OFFICE OF REGIONAL COUNSEL, 17th FLOOR

290 BROADWAY

NEW YORK, NEW YORK 10007-1888

By Facsimile

SEP - 5 2013

Carol Dinkins, Esq.
Vinson & Elkins, LLP
3300 First City Tower
1001 Fannin
Houston, TX 77002-6760

Re: Financial Assurance pursuant to Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 02-2011-2016

Dear Ms. Dinkins:

Pursuant to paragraph 110.a of the above-referenced document, your client, Occidental Chemical Corporation ("OCC") has chosen to rely for financial assurance on the Trust Fund established pursuant to the Diamond Alkali Superfund Site - Lower Passaic River Study Area Administration Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, CERCLA Docket No. 02-2007-2009. Because the balance in that Trust Fund has fallen below \$2 million, pursuant to paragraph 110.b of CERCLA Docket No. 02-2011-2016, EPA is requiring OCC to establish financial security in another form, as outlined in paragraph 109 within 30 days of this letter.

If you have any questions relating to this matter, please contact Patricia C. Hick in the Office of Regional Counsel at 212-637-3137.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. Basso".

Ray Basso
Lower Passaic River Project Director

Cc: William H. Hyatt, Jr., Esq.